

Internal Revenue Service

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Date:

September 15, 2006

Legend

Operating Company =

New Parent =

MergeCo =

KSOP =

A% =

B =

C Stock =

D Stock =

Date E =

F =

\$G =

H% =

I% =

J% =

K% =

State L =

M =

\$N =

\$O =

\$P =

\$Q =

\$R =

\$S =

T =

U =

V =

W =

X =

Y =

Z =

AA =

BB =

Dear :

This letter responds to your request for rulings as to the federal income tax consequences of a proposed transaction. The information submitted is summarized below.

Summary of Facts

Operating Company is a large U.S. T company. Almost all of the Operating Company's stock is held by BB, former employees, and a KSOP. The KSOP holds approximately A% of the Operating Company stock. Operating Company currently has B classes of stock: C Stock and D Stock (sometimes referred to collectively as "Operating Company Common Stock"). Operating Company is a Date E fiscal year taxpayer.

New Parent is an inactive subsidiary that will become the parent holding company in the transaction described below. To date, New Parent has not conducted any activities other than those incident to its formation, and the preparation of the merger agreement and the documents to be filed with the Securities Exchange Commission with respect to the initial public offering ("IPO") described below.

MergeCo will be formed by New Parent for purposes of the restructuring described below.

Proposed Transactions

The IPO

The stock of Operating Company does not trade on any national exchange. U. V. Operating Company has the right to repurchase shares held by employees when their employment with Operating Company terminates. Although Operating Company has not been obligated to repurchase shares in its Y or when employees leave the company, it has historically elected to do so.

In recent years, the amount paid by Operating Company to repurchase shares has increased dramatically due to the retirement of many longtime employees. Over the past F years, Operating Company has paid more than \$G in cash to repurchase employee shares. If the capital structure of Operating Company is not changed, Operating Company's repurchase of employee shares could be expected to represent a

substantial use of cash in future years that could otherwise be used to grow Operating Company's business.

The board of directors of Operating Company determined that creating a public market for its stock through the sale of a H% to I% interest to public investors would be the most efficient way to achieve its strategic objectives while maintaining the culture and values of a company W. The board determined that such an IPO would be undertaken in combination with a restructuring as described below pursuant to which a new company, New Parent, would be established as the holding company of the Operating Company. A public market for Operating Company's stock would provide shareholders with liquidity, X and create the opportunity for New Parent to use its stock in future acquisitions.

The stock issued in the IPO is expected to constitute between H% and I% of the value of New Parent. However, the stock issued in the IPO is only expected to represent between J% and K% of the voting rights of all of New Parent stock. New Parent does not intend to issue any nonvoting stock. Operating Company and its advisors view an IPO as the only practical means available to the Companies to create a public market for its stock. After completion of the IPO, New Parent may also adopt a general stock repurchase program to purchase shares from the open market, although there has been no decision to do so.

The Restructuring

To facilitate the IPO, Operating Company plans to engage in a restructuring through which the Operating Company forms a parent holding company, New Parent, and Operating Company's current stockholders become stockholders of New Parent. Operating Company and New Parent expect to complete the restructuring immediately prior to the IPO.

In order to establish the holding company structure in an efficient manner, the restructuring (the "Restructuring") will be accomplished as follows:

- (i) New Parent was formed under State L law as a wholly-owned subsidiary of Operating Company.
- (ii) New Parent formed a new wholly-owned subsidiary, MergeCo, under State L law.
- (iii) MergeCo will merge into Operating Company in a reverse subsidiary merger under State L law, with Operating Company surviving.
- (iv) In the merger, each outstanding share of Operating Company C Stock will be converted into the right to receive B shares of New Parent Preferred Stock and each outstanding share of Operating Company D Stock will be converted

into the right to receive M shares of New Parent Preferred Stock. Common Stock of New Parent will be offered to the public in connection with the initial public offering.

The Dividend

Operating Company has historically been very profitable and its annual net cash flow from operations has been substantial. However, because Operating Company has elected to accumulate cash to support its Y, Operating Company has never paid a dividend on its stock. Upon successful completion of the IPO, Operating Company will no longer need to provide liquidity to its stockholders. The Y will be eliminated and Operating Company will not have any right to repurchase shares of departing employees. As a result, Operating Company will no longer need a large part of its accumulated cash reserve.

Accordingly, Operating Company plans to declare a dividend (the "Dividend") of between \$N to \$O per share of C Stock or \$P to \$Q in the aggregate. The Dividend will be primarily funded out of Operating Company's excess cash reserve which is \$R. If the aggregate amount of the Dividend is more than \$R, Operating Company must borrow an amount up to \$S, to fund the portion of the Dividend that exceeds the amount of its available cash reserve. The size of the Dividend was primarily determined based upon the existing cash on hand at the Operating Company in excess of the amount that management considered necessary to fund operations, the anticipated internal growth and acquisitions, the need to maintain existing credit ratings on its notes, and achieve an optimum estimated cost of capital.

The Dividend will be declared by Operating Company in accordance with State L law before the Restructuring and the IPO and will be payable to Operating Company's stockholders of record on such Dividend declaration date. Although payment of the Dividend will be contingent upon the successful completion of the IPO, once the Dividend is declared, the Dividend will become a right of Operating Company's stockholders against Operating Company and a corresponding obligation of the Operating Company. The Restructuring will not change the rights of Operating Company stockholders or Operating Company's obligation with regard to the Dividend. New Parent will not provide any of the funds used to pay the Dividend and does not intend to reimburse Operating Company for the payment of the Dividend.

Representations

The taxpayer has made the following representations with respect to the proposed transactions:

Section 351 Representations

- (a) No stock or securities will be issued for services rendered to or for the benefit of New Parent in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of New Parent that is not evidenced by a security or for interest on indebtedness of New Parent accrued on or after the beginning of the holding period of the stockholders of Operating Company (collectively, the “transferors”) for the debt.
- (b) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (c) The transferors will not retain any rights in the property transferred to New Parent.
- (d) The adjusted basis and the fair market value of the assets transferred by the transferors to New Parent will, in each instance, equal or exceed the sum of any liabilities assumed (within the meaning of section 357(d)) by New Parent.
- (e) Any liabilities of the transferors being assumed (within the meaning of section 357(d)) by New Parent were incurred in the ordinary course of business and are associated with the assets being transferred.
- (f) There is no indebtedness between New Parent and the transferors, and there will be no indebtedness created in favor of the transferors as a result of the transaction.
- (g) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (h) All exchanges will occur on approximately the same date.
- (i) Except in connection with the repurchases from a 401(k) plan of its subsidiary (“Z”) and pursuant to any general stock repurchase program to purchase shares from the open market that New Parent may adopt, there is no plan or intention on the part of New Parent to redeem or otherwise reacquire any stock or indebtedness issued in the proposed transaction.
- (j) The transferors will be in “control” of New Parent within the meaning of section 368(c) after taking into account the following: any issuance of additional shares of New Parent stock; any issuance of stock for services; the exercise of any New Parent stock rights, warrants, or subscriptions; and the sale, exchange, transfer by gift, or other disposition of any stock of New Parent to be received in the exchange.
- (k) Each transferor will receive stock, securities, or other property having a fair market value approximately equal to the fair market value of the property transferred to New Parent or for services rendered or to be rendered for the benefit of New Parent.

- (l) New Parent will remain in existence and retain and use the property transferred to it in a trade or business.
- (m) There is no plan or intention by New Parent to dispose of the transferred property other than in the normal course of business operations.
- (n) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction. It is not anticipated that the stockholders of Operating Company will have any expenses in connection with the proposed transaction.
- (o) New Parent will not be an investment company within the meaning of section 351(e)(1) and Treas. reg. § 1.351-1(c)(1)(ii).
- (p) The transferors are not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (q) New Parent will not be a "personal service corporation" within the meaning of section 269A.

B Reorganization Representations

- (a) The fair market value of the New Parent Preferred Stock received by each Operating Company stockholder who participates in the proposed transaction will be approximately equal to the fair market value of Operating Company common stock surrendered by that stockholder in the proposed transaction.
- (b) Operating Company does not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person can acquire stock in Operating Company that, if exercised or converted, will affect New Parent's acquisition or retention of control (within the meaning of section 368(c)) of Operating Company.
- (c) Except for certain share repurchases from a retirement plan of the Operating Company and Z during the first year after the IPO and any repurchases made pursuant to any stock repurchase program of New Parent, there is no plan or intention for New Parent or any person related (as defined in *Treas. reg. § 1.368-1(e)(3)*) to New Parent, to acquire, directly or indirectly, any New Parent stock issued in the proposed transaction. As described above, after completion of the IPO New Parent may wish to adopt a general stock repurchase program. Any stock repurchases by New Parent pursuant to such a general stock repurchase program will be made on the open market as described in Rev. Rul. 99-58, 1999-2 C.B. 701. Further, except for payments by the Operating Company to Dissenters who perfect their appraisal rights, during the five-year period ending on the date of the proposed transaction, (i) neither New Parent nor MergeCo will have acquired, directly or indirectly, any

- stock of Operating Company with consideration other than New Parent stock; (ii) neither New Parent nor any person related (as defined in *Treas. § 1.368-1(e)(3)*) to New Parent will have acquired in connection with the Restructuring, directly or indirectly, any stock of Operating Company with consideration other than New Parent stock; and (iii) except for the Dividend, no distributions will have been made on Operating Company stock, either directly or indirectly, other than ordinary, regular dividend distributions. During the five year period ending on the date of the proposed transaction, Operating Company and certain persons other than New Parent and MergeCo related (as defined in *Treas. reg. § 1.368-1(e)(3)*) to Operating Company will have repurchased, directly or indirectly, stock of Operating Company with consideration other than New Parent stock. All such repurchases have been or will have been consistent with the historic practices of Operating Company and its subsidiaries, such as AA, purchases from employees whose employment is terminated and purchases from Operating Company qualified plans.
- (d) New Parent has no plan or intention to liquidate or merge Operating Company with and into another corporation, to sell or otherwise dispose of the stock of Operating Company, or to cause Operating Company to sell or otherwise dispose of any of its assets, except for transfers made in the ordinary course of business or transfers of assets to a corporation controlled by Operating Company or distributions of cash made to New Parent in connection with cash management of the Operating Company by New Parent.
 - (e) Neither New Parent nor any affiliate of New Parent owns stock in Operating Company; neither has New Parent nor any affiliate of New Parent owned Operating Company stock during the five years preceding the proposed transaction.
 - (f) Operating Company has no plan or intention to issue additional shares of stock that would result in New Parent losing control (within the meaning of section 368(c)) of Operating Company.
 - (g) Except for the Z and pursuant to any general stock repurchase program to purchase shares from the open market that New Parent may adopt, there is no plan or intention on the part of New Parent to reacquire any of its stock issued in the proposed transaction.
 - (h) New Parent and Operating Company will each pay their own expenses incurred in connection with the proposed transaction. It is not anticipated that the stockholders of Operating Company will have any expenses in connection with the proposed transaction.
 - (i) New Parent will acquire the Operating Company common stock solely in exchange for New Parent voting stock. For this representation, Operating Company common stock redeemed for cash or other property furnished by

New Parent or MergeCo is considered acquired by New Parent. Further, except for (i) New Parent becoming secondarily liable on certain long-term notes of the Operating Company issued to unrelated investors, the Operating Company's multi-year credit facilities, and any debt incurred by the Operating Company to fund the Dividend through, in each case, a guarantee of such debt and (ii) the conversion of the Operating Company's common stock into New Parent Preferred Stock issuable upon the exercise of outstanding stock options under the Operating Company's nonqualified stock option plans, no liabilities of the Operating Company or its stockholders will be assumed by New Parent, nor will any of the Operating Company stock acquired by New Parent be subject to any liabilities.

- (j) Operating Company will pay its dissenting stockholders the value of their stock out of its own funds. No funds will be supplied for that purpose, directly or indirectly, by New Parent, nor will New Parent directly or indirectly reimburse Operating Company for any payments to Dissenters.
- (k) Following the proposed transaction, Operating Company will continue its historic business or use a significant portion of its historic business assets in a business.
- (l) No two parties to the proposed transaction will be investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (m) At the time of the proposed transaction, the fair market value of the assets of Operating Company exceeded the sum of its liabilities plus the liabilities, if any, to which the assets were subject.

Dividend Representations

- (a) The special dividend will be declared by Operating Company in accordance with State L law with a dividend record date that occurs before the consummation of the Restructuring and the IPO and will be payable to Operating Company's stockholders of record on such dividend record date.
- (b) Although the Dividend will be contingent upon the successful completion of the IPO, once the Dividend is declared, the Dividend will become an obligation of Operating Company.
- (c) Although New Parent may transfer cash or assets to the Operating Company after the time that the Dividend is paid in connection with the cash management of the Companies, New Parent will not provide any of the funds used to pay the Dividend and has no plan or intent to reimburse the Operating Company for the payment of the Dividend. New Parent does not intend to transfer any cash or other assets to the Operating Company on or before the date that the Dividend is paid.

- (d) Depending upon the size of the Dividend that is declared, the Operating Company may borrow a portion of the funds that will be used to pay the Dividend from a third-party creditor. Although it is anticipated that New Parent will provide a guaranty of such debt and therefore have secondary liability for such debt, the Operating Company and New Parent expect that all payments on such debt will be made by the Operating Company and that it is unlikely that New Parent will make any of the payments on such debt.
- (e) Based on the projections set forth in Operating Company's strategic plan for the three fiscal years ending Date E, 2007, 2008 and 2009, Operating Company has concluded that its accumulated cash reserve, plus anticipated additional funds to be obtained through loans undertaken for these purposes, is more than adequate to support the Dividend, any payments to Dissenters, and any identified business and asset acquisitions, as well as Operating Company's operational needs for the foreseeable future.

Rulings

Based solely on the information submitted and on the representations set forth above, we rule as follows:

- (1) For Federal income tax purposes, the formation of MergeCo and its merger with and into Operating Company will be disregarded and the effect of the transaction will be viewed as an acquisition by New Parent of the stock of Operating Company solely in exchange for shares of New Parent Preferred stock. Rev. Rul. 67-448, 1967-2 C.B. 144.
- (2) The acquisition by New Parent of all of the outstanding stock of Operating Company solely in exchange for New Parent Preferred stock, as described above, will be a reorganization within the meaning of section 368(a)(1)(B) of the Internal Revenue Code. New Parent and Operating Company will each be "a party to a reorganization" within the meaning of section 368(b).
- (3) No gain or loss will be recognized to the Operating Company shareholders on the exchange of their Operating Company stock solely for New Parent Preferred stock, as described above (section 354(a)(1)).
- (4) Provided that the exchanging shareholders of Operating Company own not less than 80 percent of the New Parent Preferred stock, the transfer by the exchanging shareholders of Operating Company of their stock in Operating Company solely in exchange for New Parent Preferred stock will constitute an exchange within the meaning of section 351 of the Code.
- (5) No gain or loss will be recognized to New Parent upon the receipt of the stock of Operating Company solely in exchange for New Parent Preferred stock, as described above (section 1032(a)).

- (6) The basis of the New Parent Preferred stock to be received by Operating Company shareholders in the transactions described above will be the same as the basis of the Operating Company stock surrendered in exchange therefor (section 358(a)(1)).
- (7) The holding period of the New Parent Preferred stock to be received by Operating Company shareholders will include the period during which Operating Company stock surrendered by that shareholder was held, provided that Operating Company stock surrendered was held as a capital asset on the date of the exchange (section 1223(1)).
- (8) The Restructuring will qualify as a “group structure change” (Treas. reg. §1.1502-33(f)(1)). The basis of Operating Company stock to be received by New Parent immediately after the group structure change will be the same as the Operating Company’s net asset basis as determined under Treas. reg. §1.1502-31(c), subject to the adjustments described in Treas. reg. §1.1502-31(d). (Treas. reg. §1.1502-31(b)(2)). For purposes of §1.1502-31(c), the Dividend is treated as a liability of Operating Company. Therefore, New Parent’s basis in Operating Company stock will be reduced by the declared amount of the Dividend (whether deductible or not). If the declared amount is more or less than the actual amount distributed, appropriate adjustments will be required to be made.
- (9) If the Dividend is paid by Operating Company to its shareholders at the time and in the manner described in the facts and representations section of this letter, it will be treated as a distribution to which § 301(a) applies.

Caveat

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to the federal income tax return, of each taxpayer involved, regarding the taxable year in which the transaction is consummated.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Debra L. Carlisle

Debra L. Carlisle
Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: